



Plaintiff's allegations are based upon and rely upon the terms of the Employment Agreements that Defendants had with Lower in bringing these assorted claims and allegations against Mastrorilli and Hankins.

In conferring with counsel for Lower, all Defendants duly advised counsel for Lower that they all, in unison, consent to pursue this case in JAMS arbitration as Plaintiff's Complaint at footnote 2 states that all employment related claims will be litigated in arbitration. *See Complaint [Dkt.1] at FN 2*. The undersigned counsel even secured express authority from Kristen Mastrorilli and Ron Hankins, prior to them being served with process, consenting to arbitration. As evidenced above, the Employment Agreements of Ms. Mastrorilli and Mr. Hankins both contain JAMS arbitration clauses drafted by Lower, LLC. and goes so far as to reinforce those arbitration clauses by conspicuously attaching a free-standing Mutual Arbitration Agreement as Exhibit 1 to the contract reinforcing this right.

It is concerning that Lower, LLC is the only party to this lawsuit that wants to avoid honoring the Employment Agreements. The Employment Agreements have a clear and conspicuous Waiver of Jury Trial at pages 14-15 coupled with a Dispute Resolution and Arbitration Clause which in turn references the Mutual Arbitration Agreement calling for arbitration through JAMS. The Mutual Arbitration Agreements then reinforce the company's and employee's waiver of a jury trial and **"agree all legal disputes and claims between them shall be determined exclusively by final and binding arbitration. Claims subject to this Agreement include without limitation all claims pertaining to the Individual's employment or other relationship with Homeside."**<sup>2</sup> *See Exhibits A and B attached hereto at Exhibit 1.*

---

<sup>2</sup> Homeside Financial is a d/b/a of Lower, LLC.

The Mutual Arbitration Agreements signed by Mastrorilli, Hankins, and Lower only carve out of the arbitration agreement, claims for worker's compensation benefits, provisional remedies, motions to enforce this arbitration agreement, injunctive relief, and administrative proceedings with the EEOC or NLRB which are inapplicable here. Plaintiff has not plead any injunctive relief against Mastrorilli or Hankins nor asked for any provisional remedy. *See Complaint* [Dkt. 1] *at Count I.*

The allegations asserted by Lower, LLC against Ms. Mastrorilli, Mr. Hankins, and even Ms. Boyd allege that they "followed improper mortgage lending practices..." *Complaint* at page 3. Lower further alleges that Ms. Mastrorilli and Mr. Hankins "disregarded that at least 13 customers did not meet Lower's loan eligibility" criteria. *Complaint* at Paragraph 49. Finally, Lower alleges that Ms. Mastrorilli and Mr. Hankins allegedly misrepresented that they "complied with Lower's established loan practices and guidelines..." *Complaint* at Paragraph 129a. All of these allegations, although herein denied, fall squarely and arise out of or are related to these former employees' employment with Lower, LLC. Footnote 2 to the Original Complaint states:

<sup>2</sup> As is more fully described herein, Mr. Ozment was employed by Lower pursuant to the terms and conditions of the "Branch Manager, VP Employment Agreement" executed by Mr. Ozment and Lower. With the exception of claims for injunctive relief, the Employment Agreement states that all claims that arise out of or are related to Mr. Ozment's employment shall be submitted to arbitration. Therefore, Lower's employment-related claims will be resolved through arbitration. Agreement ¶¶ 6, 7.

PLAINTIFF'S ORIGINAL COMPLAINT  
30086/749957

PAGE 4

Lower, LLC should not be allowed to selectively litigate and piecemeal the litigation as it chooses and should be ordered to comply with its own Arbitration Agreement which it has forced all of its employees to sign and abide by.

Therefore, Kristen Mastrorilli and Ron Hankins join with Jason Ozment in requesting that this case be stayed, abated, or dismissed and that the claims asserted in this lawsuit all be referred to JAMS arbitration. AmCap has joined in Ozment's Motion to Compel Arbitration and consented to participate in the arbitration. Natalie Boyd has also agreed to arbitrate. This Court should not permit Lower, LLC to litigate on two fronts.

WHEREFORE, PREMISES CONSIDERED, Defendants Kristen Mastrorilli and Ron Hankins respectfully pray that this Court would stay this proceeding and refer all claims and causes of actions against the Defendants to JAMS arbitration in compliance with Lower, LLC's own Arbitration Agreement.

Respectfully submitted,

MCGLINCHEY STAFFORD PLLC

/s/ Gary L. Pate

Gary L. Pate

Texas Bar No. 24029763

1001 McKinney, Suite 1500

Houston, Texas 77002

281-755-8331

[gpate@mcglinchey.com](mailto:gpate@mcglinchey.com)

***Attorney-In-Charge for Defendant/  
Counter-Plaintiff Amcap Mortgage, Ltd.  
and Defendants Kristen Mastrorilli and  
Ron Hankins***

OF COUNSEL:

Marilyn S. Cayce

Texas Bar No. 17705500

McGlinchey Stafford PLLC

1001 McKinney St., Suite 1500

Houston, Texas 77002

713-335-2122

[mcayce@mcglinchey.com](mailto:mcayce@mcglinchey.com)

**CERTIFICATE OF CONFERENCE**

Pursuant to Local Rule CV-7(i), I represent that (1) I have complied with the “meet and confer” requirement of Local Rule CV-7(h) by calling counsel for Lower, LLC, Sanna-Rae Taylor twice on the telephone (once on October 26 and once on October 27 to discuss AmCap’s joinder and the consent of Kristen Mastroilli and Ron Hankins to appear in JAMS Arbitration) and calling Julian Johnson who told me that he would have Sanna-Rae Taylor call me back. I discussed the Joinder with Mr. Johnson, but he said Sanna-Rae Taylor would have to decide. The issue of arbitration was also discussed in the 26(f) conference and Defendants all asked counsel for Lower whether Lower would agree to arbitration. Counsel for Lower said that they would check with their client, but to date they have not agreed to dismiss this case and pursue the claims in arbitration. All counsel for Defendants, Robert Blackwell and Daniel White, both stated that they are in agreement with the Joinder of AmCap and the later inclusion of Kristen Mastroilli and Ron Hankins. Despite my three telephone calls with counsel for Lower, LLC no agreement can be reached as to arbitrating this matter despite the fact that Lower, LLC drafted the arbitration agreement and all Defendants concur with arbitrating the matter. This matter has resulted in an impasse, leaving an open issue for the Court to resolve.

3 January 2024

/s/ Gary L. Pate

Gary L. Pate

**CERTIFICATE OF SERVICE**

I hereby certify that on January 3, 2024, a true and correct copy of this instrument was served on all counsel of record via Email and/or Electronic Service:

Stephen D. Henninger  
[shenninger@fhmbk.com](mailto:shenninger@fhmbk.com)

John F. Roehm, III  
[jroehm@fhmbk.com](mailto:jroehm@fhmbk.com)  
Fanning Harper Martinson Brandt & Kutchin  
8140 Walnut Hill Lane, Suite 200  
Dallas, Texas 75231

Sanna-Rae Taylor  
[srtaylor@taftlaw.com](mailto:srtaylor@taftlaw.com)  
Julian P. Johnson  
[jjohnson@taftlaw.com](mailto:jjohnson@taftlaw.com)  
Taft Stettinius & Hollister LLP  
425 Walnut Street, Suite 1800  
Cincinnati, Ohio 45202

Robert Blackwell  
Lindsey Reinhardt  
[bblackwell@bbhslp.com](mailto:bblackwell@bbhslp.com)  
[lreinhardt@bbhslp.com](mailto:lreinhardt@bbhslp.com)  
BLACKWELL, BLACKBURN, HERRING  
& SINGER, LLP  
7557 Rambler Road, Suite 1450  
Dallas, Texas 75231

Daniel White  
[dwhite@wardwhitepllc.com](mailto:dwhite@wardwhitepllc.com)  
Ward + White PLLC  
1111 W. Mockingbird Ln, Suite 1480  
Dallas, Texas 75247

/s/ Gary L. Pate  
Gary L. Pate